

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

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|---|-------------------|-----------------|--------------------|
| DAR file no: | | Date filed: | |
| State Admin Rule Filing Id: | | Time filed: | |
| | Agency No. | Rule No. | Section No. |
| Utah Admin. Code Ref (R no.): | R 156 | - | 1 |
| Changed to Admin. Code Ref. (R no.): | R | - | - |

| | | | | |
|-----------|---------------------------|--|--------------|--------------------|
| 1. | Agency: | Commerce/Division of Occupational and Professional Licensing | | |
| | Room no.: | | | |
| | Building: | Heber M. Wells Building | | |
| | Street address 1: | 160 East 300 South | | |
| | Street address 2: | | | |
| | City, state, zip: | Salt Lake City UT 84111-2316 | | |
| | Mailing address 1: | PO Box 146741 | | |
| | Mailing address 2: | | | |
| | City, state, zip: | Salt Lake City UT 84114-6741 | | |
| | Contact person(s): | | | |
| | Name: | Phone: | Fax: | E-mail: |
| | W. Ray Walker | 801-530-6256 | 801-530-6511 | raywalker@utah.gov |
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(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

| | |
|-----------|---|
| 2. | Title of rule or section (catchline): |
| | General Rule of the Division of Occupational and Professional Licensing |
| 3. | Type of notice: |
| | New ____; Amendment XX; Repeal ____; Repeal and Reenact ____ |
| 4. | Purpose of the rule or reason for the change: |
| | This is a companion filing to proposed changes to R156-46b, Division Administrative Procedures Act Rule. The purpose of this filing is to revise the designation of presiding officers brought about by the R156-46b changes to the designation of adjudicative proceedings from formal proceedings to informal proceedings. Most of these changes are renumbering changes, but a number are substantive as described in the summary below. |
| 5. | This change is a response to comments from the Administrative Rules Review Committee. |
| | No XX; Yes ____ |
| 6. | Summary of the rule or change: |

| | | |
|-----|--|----------------------|
| | <p>This summary will focus on the substantive changes only and will do so in a global fashion rather than subsection by subsection, which would be more confusing than helpful in this case. In short, the Division of Occupational and Professional Licensing (DOPL) Director or Construction Service Commission remains the presiding officer for all disciplinary actions initiated by a notice of agency action against a licensee. Boards remain advisory to the Director for all disciplinary actions initiated by a notice of agency action that go to a formal hearing or come before a board informally as part of their board agenda. Disciplinary actions by the Construction Service Commission, normally informal, still require the concurrence of the Director. The DOPL Bureau Managers become the presiding officer for denial of applications for renewal and denial of reinstatement under 58-1-308(5)(a) and (6)(b), which is a very similar role to their existing role as the presiding officer for denial of applications for initial licensure. Boards are advisory to the Bureau Managers in their role. This role was already designated as a role of the DOPL Bureau Managers unless the applicant requested a formal hearing, in which case it went before the appropriate board as the presiding officer to enter findings of fact, conclusions of law, and a recommended order to the Director for final action. The companion filing eliminated formal hearings in this arena, and thus this filing designates the Bureau Manager as the presiding officer completely for applications for denials of renewal and reinstatement of licensure.</p> | |
| 7. | Aggregate anticipated cost or savings to: | |
| | A) State budget: | |
| | Affected: No ___; Yes XXX | |
| | <p>The identity of the presiding officer changes will not affect the state budget. However, the Division will incur minimal costs of approximately \$80.00 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p> | |
| | B) Local government: | |
| | Affected: No XXXX; Yes ___ | |
| | <p>The identity of the presiding officer changes will not affect local government and thus will not result in any cost or savings impact upon local governments.</p> | |
| | C) Small businesses ("small business" means a business employing fewer than 50 persons): | |
| | Affected: NoXXX; Yes ___ | |
| | <p>The identity of the presiding officer changes will not affect small business and thus will not result in any cost or savings impact upon small business.</p> | |
| | D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency): | |
| | Affected: No XXX; Yes ___ | |
| | <p>The identity of the presiding officer changes will not affect other persons and thus will not result in cost or savings impact upon other persons.</p> | |
| 8. | Compliance costs for affected persons: | |
| | <p>The identity of the presiding officer changes will not affect other persons and thus will not result in cost or savings impact upon other persons.</p> | |
| 9. | A) Comments by the department head on the fiscal impact the rule may have on businesses: | |
| | <p>No fiscal impact to businesses is anticipated from this rule filing which changes the designation of presiding officers based on a companion rule filing that changes formal adjudicative proceedings to informal ones.</p> | |
| | B) Name and title of department head commenting on the fiscal impacts: | |
| | <p>Francine A. Giani, Executive Director</p> | |
| 10. | This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. | |
| | State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) : | |
| | Subsection 58-1-106(1)(a) | Section 58-1-308 |
| | Subsection 58-1-501(4) | |
| | | |
| 11. | This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>): | |
| | First Incorporation | Second Incorporation |

| | | | |
|--|---|---------------------------|--------------------|
| | Official Title of Materials Incorporated (from title page) | | |
| | Publisher | | |
| | Date Issued | | |
| | Issue, or version | | |
| | ISBN Number (optional) | | |
| | ISSN Number (optional) | | |
| | Cost of Incorporated Reference | | |
| | Action: Adds, updates, or removes | | |
| | (If this rule incorporates more than two items by reference, please attach additional pages) | | |
| 12. | The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.) | | |
| | A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): | 10/01/2012 | |
| | B) A public hearing (optional) will be held: | | |
| | On (mm/dd/yyyy): | At (hh:mm AM/PM): | At (place): |
| | | | |
| | | | |
| | | | |
| | | | |
| 13. | This rule change may become effective on (mm/dd/yyyy): | | 10/08/2012 |
| | NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over. | | |
| 14. | Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency: | | |
| | diversion programs | licensing | |
| | occupational licensing | supervision | |
| 15. | Attach an RTF document containing the text of this rule change (filename): | | R156-1.pr2 |
| To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date. | | | |
| AGENCY AUTHORIZATION | | | |
| Agency head or designee, and title: | Mark B. Steinagel, Director | Date (mm/dd/yyyy): | 08/06/2012 |

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(~~e~~b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(~~d~~g), [~~h~~], (j), (l), (m), (~~n~~o), (~~p~~s), and (t), and R156-46b-202(2)(a) [~~, (b) and (c)(ii)~~] through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) ~~[formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the Division based upon the record developed at the hearing determining all issues pending before the Division to the director for a final order;~~

~~—(ii)—~~ formal adjudicative proceedings described in Subsection R156-

46b-201(1)(~~[f]~~c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (~~[e]~~d), (~~[e]~~, ~~—~~)(~~[g]~~f), (~~[i]~~h), (~~[k]~~j), (~~[o]~~n), (~~[q]~~p)(ii) and (iii), (~~[r]~~q)(ii) and (iii), (~~[s]~~r)(ii) and (iii), and R156-46b-202(2)(~~[e]~~b)(iii).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(~~[i]~~k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(~~[f]~~e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(~~[g]~~f) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) ~~[for formal adjudicative proceedings described in Subsections R156-46b-201(1)(e) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;~~

~~—(B)—~~informal adjudicative proceedings described in Subsections

R156-46b-202(1)(~~(d)~~), (m), (~~(n)~~), (~~(p)~~), (~~(s)~~)(i), (s), and (t), and R156-46b-202(2)(b) ~~[and]~~ through (~~(e)~~), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by

the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(~~[e]~~b) through (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting[+]

~~—(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and~~
~~—(ii)]~~ informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (~~[e]~~d), (~~[e]~~d), (~~[e]~~h), (~~[e]~~n), (~~[e]~~p)(i) and (~~[e]~~q)(i).

(~~[iii]~~e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(~~[e]~~f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(~~[f]~~g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(~~[g]~~h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be

licensed as alarm companies or agents.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

~~[(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b, with allowance for exceptions.~~

~~[(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the Division's action as permitted by Subsection 63C-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the Division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).]~~

~~[(3)(a)]~~ (1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(~~[b]~~2) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(~~[e]~~3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(~~[d]~~4) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(~~[e]~~5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(~~[i]~~a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(~~[i]~~b) the Division's file or other reference number of the audit or investigation; and

(~~[i]~~c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested~~;~~

~~[(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and~~

~~—— (v) that if the applicant timely requests review, the applicant's
conditionally issued, renewed, or reinstated license does not expire until
an order is issued unconditionally issuing, renewing, reinstating,
denying, or partially denying the initial issuance, renewal, or
reinstatement of the applicant's license].~~

KEY: diversion programs, licensing, occupational licensing, supervision
Date of Enactment or Last Substantive Amendment: [~~June 7,~~]2012
Notice of Continuation: January 5, 2012
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-
308; 58-1-501(4)